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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

BEFORE THE HONORABLE WILLIAM H. ORRICK

HUAWEI TECHNOLOGIES CO., LTD., HUAWEI DEVICE USA, INC., AND HUAWEI TECHNOLOGIES USA, INC., PLAINTIFFS / COUNTERCLAIMDEFENDANTS, V. SAMSUNG ELECTRONICS CO., LTD., SAMSUNG ELECTRONICS AMERICA, INC., DEFENDANTS / COUNTERCLAIMPLAINTIFFS, AND SAMSUNG RESEARCH AMERICA, DEFENDANT, V. HISILICON TECHNOLOGIES CO., LTD., COUNTERCLAIM-DEFENDANT.	NO. 3:16-CV-0287 WHO SAN FRANCISCO, CALIFORNIA TUESDAY SEPTEMBER 13, 2016

TRANSCRIPT OF PROCEEDINGS OF THE OFFICIAL ELECTRONIC SOUND RECORDING 2:21 P.M. 3:00 P.M.

TRANSCRIBED BY: JOAN MARIE COLUMBINI, CSR #5435, RPR
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TUESDAY, SEPTEMBER 13, 2016 2:21 P.M.

(TRANSCRIBER'S NOTE: DUE AT TIMES TO COUNSEL'S FAILURE TO IDENTIFY THEMSELVES WHEN SPEAKING, CERTAIN SPEAKER ATTRIBUTIONS ARE BASED ON EDUCATED GUESS.)

PROCEEDINGS

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THE CLERK: CALLING 16-2787 HUAWEI TECHNOLOGIES, CORPORATION, LIMITED, ET AL. VERSUS SAMSUNG ELECTRONICS COMPANY, LIMITED, ET AL.

COUNSEL, PLEASE COME FORWARD AND STATE YOUR APPEARANCE.

MR. PRITIKIN: GOOD AFTERNOON, YOUR HONOR. DAVID PRITIKIN ON BEHALF OF PLAINTIFFS. AND WITH ME IS MICHAEL BETTINGER, IRENE YANG, DAVID GIARDINA. AND FROM HUAWEI, WE ALSO HAVE TAO ZHANG.

MR. BETTINGER: GOOD AFTERNOON, YOUR HONOR.

THE COURT: GOOD AFTERNOON.

MR. VERHOEVEN: GOOD AFTERNOON, YOUR HONOR. CHARLES VERHOEVEN FROM QUINN EMANUEL ON BEHALF OF SAMSUNG. WITH ME IS KEVIN JOHNSON -- MY PARTNERS KEVIN JOHNSON, VICKY MAROULIS, CARL ANDERSON, DAVID PERLSON.

WE ALSO HAVE CHRIS BURRELL, DIRECTOR AND SENIOR COUNSEL OF SAMSUNG. MICHELLE YANG, DIRECTOR OF IP. YONG HEE KANG, SENIOR LEGAL COUNSEL. AND YONG CHOI, WHO IS ALSO COUNSEL FROM SAMSUNG.

THE COURT: WELCOME. WELCOME, EVERYBODY.

MR. JOHNSON, IT'S NICE TO SEE YOU AGAIN. YOU'VE APPEARED IN MY COURT OFTEN.

SO LET'S START WITH THE ISSUE OF WHETHER WE'RE GOING TO BIFURCATE OR NOT. AND THERE ARE, OBVIOUSLY, A COUPLE OF WAYS THAT PEOPLE OF GOODWILL COULD FIGURE OUT HOW TO RESOLVE THIS. AND ONE WAY WOULD BE TO HAVE NEGOTIATED IT. THAT DOESN'T SEEM TO HAVE WORKED.

IF THERE WAS AN AGREEMENT TO DEAL WITH AN ISSUE IN THE CASE THAT WOULD MAKE EVERYBODY'S LIFE EASIER, THAT WOULD BE SIMPLE AND -- BUT THERE DOESN'T SEEM TO BE THAT.

AND I'VE LOOKED AT ALL THE CASES THAT THE PARTIES CITED AND A COUPLE OF MY OWN. I'M NOT INCLINED TO BIFURCATE ON THE FRAND ISSUE.

EVERY TIME I TRY TO DO SOMETHING WISE THAT CUTS THE TIME OF PEOPLE BY NOT FOLLOWING THE STANDARD PROCEDURES, IT DOESN'T WORK. IT NEVER WORKED FOR ME AS A LAWYER, AND IT HASN'T WORKED FOR ME AS A JUDGE. SO I'M THINKING TIMEWISE IT'S GOING TO BE FASTER TO JUST PROCEED, UNLESS THE PARTIES CAN FIGURE OUT TOGETHER A BETTER WAY OF DEALING WITH THINGS.

SO, MR. PRITIKIN, YOU CAN MAKE A PITCH, BUT YOU CAN SEE WHERE I'M LEANING.

MR. PRITIKIN: SURE. LET ME TAKE A TRY.

THE COURT: OKAY.

MR. PRITIKIN: A STAB AT IT, ANYWAY, YOUR HONOR.

SO THE CENTRAL ISSUE, I THINK YOU PUT YOUR FINGER ON IT, REALLY. THE CENTRAL ISSUE IS THEIR OUGHT TO BE A CROSS-LICENSE BETWEEN THESE PARTIES. THEY BOTH RECOGNIZE THAT THEY HAVE AN OBLIGATION TO GRANT LICENSES. THEY BOTH WANT LICENSES. THAT'S EVIDENT FROM THE PLEADINGS IN THE CASE.

AND THE DISPUTE IS WHAT IS THE FRAND RATE FOR THE RESPECTIVE PORTFOLIOS. ONCE THE FRAND RATE IS DETERMINED, EVERYTHING ELSE TENDS TO FALL BY THE WAYSIDE HERE. THAT'S THE CENTRAL ISSUE IS TO WHAT THE RATE IS. ONCE WE KNOW WHAT THE RATE IS, WE'RE ENTITLED TO A LICENSE ON THAT BASIS, AND RECIPROCALLY THEY ARE AS WELL.

WE BELIEVE THAT THE LOGICAL AND THE SIMPLEST WAY TO GET FROM HERE TO THERE IS FOR THE COURT TO DETERMINE WHAT THE FRAND RATE IS.

THE COURT: SO WHAT I READ, AS OPPOSED TO WHAT YOU BELIEVE OUGHT TO BE THE CASE, IS THAT YOUR COLLEAGUES ON THE OTHER SIDE CONTEST THAT ALL OF THE PATENTS ARE VALID AND THAT THEY WOULD HAVE TO PAY ON THOSE, AND, THEREFORE, TRYING TO FIGURE OUT THE FRAND RATE UNTIL YOU FIGURE OUT WHAT PATENTS YOU ARE ACTUALLY TALKING ABOUT IS PUTTING THE CART BEFORE THE HORSE AND WOULD REQUIRE MORE TIME.

AND, OF COURSE, THERE HAVE BEEN A FEW CASES, JUDGE KRONSTADT, I THINK MOST RECENTLY IN L.A., DETERMINING THAT. SO WHY -- WHAT AM I MISSING HERE?

MR. PRITIKIN: YEAH. I THINK I CAN EXPLAIN THAT,

YOUR HONOR, BECAUSE WHAT WE'RE DEALING WITH IS PORTFOLIOS HERE THAT HAVE THOUSANDS OF PATENTS IN THEM. THIS DISPUTE IS NOT JUST ABOUT THE 11 PATENTS THAT THEY SUED ON OR THE 11 PATENTS THAT WE SUED ON. IN FACT, IN SOME WAYS THAT'S THE TIP OF THE ICEBERG.

THE ULTIMATE ISSUE HERE IS GOING TO BE A LICENSE TO THE PORTFOLIOS; OTHERWISE, THE BATTLES GO ON ENDLESSLY. THE RESOLUTION OF THE 11 PATENTS DOESN'T RESOLVE THE ENTIRETY OF THE CONTROVERSY. IT RESOLVES THOSE SPECIFIC PATENT DISPUTES.

THE FACT IS THAT PARTIES ARE ENTITLED TO A LICENSE ON FRAND TERMS TO THE DECLARED PATENTS. AND YOU REALLY DON'T HAVE TO LOOK ANY FURTHER TO THEIR PLEADINGS TO SEE WHERE THAT IS CONFIRMED.

AND SO THE WHOLE CONCEPT OF THE STANDARD ESSENTIAL PATENT REGIME AND FRAND IS THAT IT RECOGNIZES THAT PARTIES ARE GOING TO HAVE VERY LARGE NUMBER OF PATENTS AND THAT IT ISN'T GOING TO BE PRACTICAL TO ADJUDICATE EVERY ONE OF THOSE THOUSANDS OF PATENTS TO CONCLUSION TO DETERMINE WHETHER IT IS ESSENTIAL, IT'S INFRINGED, IT'S ENFORCEABLE, IT'S VALID, AND SO FORTH.

IN FACT, IF YOU LOOK AT THEIR PLEADINGS -- AND YOU CAN LOOK AT PARAGRAPH 316 OF THE COUNTERCLAIMS -- WHERE THEY SAY THAT THE IPR POLICY REQUIRES THE OWNER OF PATENTS THAT MIGHT BE ESSENTIAL TO A STANDARD TO FILE AN IPR DISCLOSURE AND TO LICENSE THE DISCLOSED IPRS ON FRAND TERMS ON CONDITIONS TO

THOSE WHO IMPLEMENT THE RELEVANT STANDARDS.

THE CONCEPT UNDERLYING THE STANDARD ESSENTIAL PATENT REGIME IS THAT YOU DECLARE YOUR PATENTS, MAYBE A VAST NUMBER OF THEM THAT ARE DECLARED IN THE CASE OF COMPANIES LIKE HUAWEI AND SAMSUNG AND SOMEBODY WHO IS AN IMPLEMENTER HAS A RIGHT TO GET A LICENSE TO THOSE. YOU DON'T HAVE TO GO THROUGH (UNDISCERNIBLE) PATENT. THAT'S THE WHOLE PURPOSE OF LICENSING THEM, IS TO AVOID THE NECESSITY FOR THE PROLONGED PATENT LITIGATION.

AND THERE'S NO QUESTION THAT THE COURT HAS THE POWER TO DO THIS. SURE, BY AGREEMENT, THERE'S LOTS OF THINGS THAT COULD HAPPEN. IN A RATIONAL WORLD, THE PARTIES WOULD AGREE TO LET A NEUTRAL THIRD-PARTY ARBITRATOR DECIDE WHAT THE FRAND RATE IS. FOR THE LIFE OF ME I DON'T UNDERSTAND WHY SAMSUNG WON'T AGREE TO THAT, BUT WE CAN'T FORCE THEM TO GO TO ARBITRATION.

BUT WE'RE IN COURT, AND YOU HAVE THE POWER TO STAGE THE PROCEEDINGS IN A WAY THAT IS SENSIBLE AND THAT BRINGS ABOUT AN ORDERLY RESOLUTION OF THIS.

THE COURT: SO AT THE END OF THE DAY AM I GOING TO -- IS -- ARE THE PARTIES GOING TO BE ARGUING -- LET'S SAY -- LET'S SAY ALL 11 PATENTS ARE STILL IN THE CASE WHEN IT COMES TO TRIAL. IS THE ROYALTY GOING TO BE BASED ON THOSE 11 PATENTS, OR IS IT GOING TO BE BASED ON ALL THE PATENTS THAT ARE ASSERTED IN ALL OF THE -- I COUNTED THEM UP AT ONE POINT. I CAN'T REMEMBER -- 22 CASES THAT YOU TOLD ME ABOUT. MAYBE THERE ARE OTHERS.

SO WHAT WILL BE BEFORE ME?

MR. PRITIKIN: I THINK BOTH ARE GOING TO BE BEFORE YOU, YOUR HONOR, BUT THEY COME UP DIFFERENT -- IN DIFFERENT WAYS PROCEDURALLY.

THEY HAVE ASSERTED 11 PATENTS AGAINST US. WE'VE ASSERTED 11 PATENTS AGAINST THEM. IF THOSE PATENT INFRINGEMENT CASES ULTIMATELY GO TO TRIAL ON WHATEVER PATENTS ARE STILL LEFT IN THE CASE AT THE TIME OF TRIAL, THE JURY IS GOING TO AWARD DAMAGES, PRESUMABLY A REASONABLE ROYALTY, A FRAND ROYALTY ON THOSE 11 PATENTS.

THE COURT: RIGHT.

MR. PRITIKIN: NOT ON THE REST OF IT.

BUT THE REST OF IT COMES IN BECAUSE OF OTHER CLAIMS THAT HAVE BEEN ASSERTED IN THE CASE. AND THERE ARE TWO REASONS WHY IT COMES INTO THE CASE.

FIRST, WE HAVE A BREACH OF FRAND CLAIM THAT WE'VE ASSERTED AGAINST THEM. THEY HAVE ACCUSED US OF BREACHING OUR FRAND OBLIGATIONS. IN ORDER TO RESOLVE THAT -- AND, ULTIMATELY, I DON'T KNOW WHETHER IT'S GOING TO BE TRIED TO THE COURT OR TO A JURY; IT DOESN'T REALLY MAKE ANY DIFFERENCE FOR PRESENT PURPOSES.

IN THE COURSE OF RESOLVING THAT, THE COURT HAS THE POWER TO DETERMINE WHAT THE FRAND RATE IS FOR THE TWO PORTFOLIOS AS A WHOLE OR TO PUT A SPECIAL INTERROGATORY TO THE JURY TO DETERMINE THAT.

I MEAN, THAT'S ESSENTIALLY WHAT JUDGE ROBART DID IN THE *MICROSOFT-MOTOROLA* CASE. HE DECIDED THAT AS A PREREQUISITE TO RESOLVING THE BREACH OF FRAND CASE, IT WAS NECESSARY TO DETERMINE WHAT THE FRAND RATE WAS, AND HE SET ABOUT DOING IT.

NOW, SUBSEQUENTLY, THERE WAS A CONTROVERSY BETWEEN THE PARTIES AS TO WHETHER IT SHOULD HAVE BEEN THE COURT OR A JURY. BUT THAT'S NOT THE ISSUE FOR PRESENT PURPOSES. CLEARLY, THE COURT HAS THE POWER TO DO IT.

SECONDLY, WE HAVE A DECLARATORY JUDGMENT ACTION WHERE WE HAVE -- THERE IS A CONTROVERSY, A LIVE JUSTICIABLE CONTROVERSY BETWEEN THE PARTIES AS TO WHAT A FRAND RATE IS FOR OUR PORTFOLIO AND FOR THEIR PORTFOLIO. THAT ISSUE IS PRESENT. IT IS FRONT AND CENTER. IT IS AN ISSUE THAT THE COURT HAS THE POWER TO RESOLVE. WE DON'T NEED TO DECIDE TODAY WHETHER THAT'S FOR THE COURT OR THE JURY. I THINK THE COURT HAS THE POWER TO DO IT, BUT THAT'S NOT TODAY'S PROBLEM.

TODAY'S QUESTION IS HOW DO WE GET THIS CONTROVERSY RESOLVED. AND THE FUNDAMENTAL PROBLEM WITH PROCEEDING DOWN THIS PATENT PATH ONE BY ONE BY ONE, AS JUDGE ROBART RECOGNIZED IN THE *MICROSOFT* CASES, THAT IT TAKES YOU INTO A CUL-DE-SAC AT THE END OF THE DAY BECAUSE IT LEAVES A LARGER ISSUE OUT THERE. AND THAT'S THE ISSUE THAT'S GOING TO RESOLVE THE CONTROVERSY.

ONE OF THE ARGUMENTS THAT IS PRESENTED BY SAMSUNG -- AND WE SEE THIS OVER AND OVER IN THE CASE MANAGEMENT CONFERENCE -- THEIR PORTION OF IT IS THAT, WELL, YOU CAN'T DO

THIS UNLESS THE PARTIES CONSENT TO IT.

IF YOU LOOK AT THE OTHER CASES WHERE COURTS HAVE DETERMINED FRAND RATES, AND THERE ARE PLENTY OF THEM OUT THERE WHERE COURTS HAVE DONE THAT. JUDGE WHITE DID THAT IN THE *REALTEK VERSUS LSI* CASE. THEY SAY THAT THOSE CASES ALL INVOLVED CONSENT, AND HERE WE'LL CONSENT. THEY WON'T CONSENT. THEY WON'T CONSENT TO ANYBODY DECIDING THIS, AND, THEREFORE, YOU CAN'T DO IT. AND THAT IS JUST WRONG. THAT IS JUST WRONG.

PARTIES CANNOT CONFER JURISDICTION ON A COURT BY CONSENT. THEY CAN AGREE TO PROCEDURES, BUT IF A COURT DOESN'T HAVE THE INHERENT POWER TO DO IT, THE FACT THAT THE PARTIES COME BEFORE THE COURT AND SAY, YOU DECIDE IT, YOU TELL ME WHAT COLOR I'M GOING TO PAINT MY LIVING ROOM, THAT DOESN'T CREATE JURISDICTION.

SO THERE ARE NUMEROUS COURTS THAT HAVE, IN FACT, SET FRAND RATES.

THE COURT: BUT MOST OF THEM -- WOULDN'T YOU AGREE THAT MOST OF THEM HAVE DONE IT -- NOT BECAUSE OF, BUT IN CASES WHERE THE PARTIES DID, IN FACT, CONSENT. THE PARTIES THOUGHT IT WAS A GOOD IDEA.

MR. PRITIKIN: MOST, BUT NOT ALL.

THE COURT: MOST, BUT NOT ALL. I WOULD AGREE WITH THAT, TOO.

MR. PRITIKIN: AND I WOULD SUBMIT IN THE CASES WHERE THE COURT DID IT, THE FACT THAT THERE WAS CONSENT DOES NOT

CONFER JURISDICTION ON THE COURT.

THE COURT: I AGREE. I AGREE. AND I ACTUALLY -- I COME FROM A LONG LINE OF PEOPLE WHO THINK THAT A FEDERAL JUDGE CAN DO ALMOST ANYTHING. SO YOU DON'T HAVE TO CONVINCE ME OF MY ABILITY TO DO IT. THE WISDOM IS THE THING THAT I'M -- LET ME TURN IT OVER TO MR. VERHOEVEN.

MR. VERHOEVEN: THANK YOU, YOUR HONOR.

IN RESPONSE, YOU ASKED A QUESTION TO COUNSEL ABOUT THE 11 PATENTS, AND WE'RE GOING TO ASK FOR A RATE FOR JUST THAT. COUNSEL SAID, NO, THEY ARE GOING TO DO THAT, BUT THEN THEY'RE GOING TO ASK FOR A RATE, I GUESS, WORLDWIDE, WITHOUT STIPULATION OF THE PARTIES.

AND THE FIRST REASON THAT COUNSEL PROFFERED TO YOU FOR WHY THAT WAS APPROPRIATE WAS ITS BREACH OF CONTRACT CLAIM. BUT ITS BREACH OF CONTRACT CLAIM IS UNDER ETSI, YOUR HONOR, AND IN PREREQUISITES TO ANY OBLIGATIONS UNDER ETSI RULES, WHICH ARE GOVERNED BY FRENCH LAW, BY THE WAY, YOUR HONOR, IS YOU GOT SHOW THE PATENT IS VALID, YOU GOT TO SHOW IT'S INFRINGED, AND YOU GOT TO SHOW IT'S ESSENTIAL.

THE DECLARATION THAT ETSI TALKS ABOUT IS A DECLARATION THAT IT MAY BE ESSENTIAL, AND THAT IF IT'S DETERMINED TO BE, THEN YOU WILL LICENSE ON FRAND TERMS. AND SO IT DOESN'T -- I MEAN, I'VE BEEN THROUGH THIS ETSI LITIGATION MULTIPLE TIMES. THERE'S NO ENFORCEMENT MECHANISM AT ESTI. IT'S VERY UNCLEAR HOW THE LAW WOULD APPLY IN THE UNITED STATES

TO REMEDY.

BUT THE POINT I'M TRYING TO MAKE, YOUR HONOR, THOUGH, IS THESE ARE PREREQUISITE ISSUES, AND THAT DOES NOT JUSTIFY THE COURT GOING BEYOND THAT AND SETTING A WORLDWIDE RATE FOR PATENTS FROM 15 DIFFERENT TECHNOLOGICAL AREAS BASED ON 11 PATENTS. THAT JUST DOESN'T SUPPORT THAT.

NOW, AS TO THE DECLARATORY RELIEF, BASICALLY WHAT THEY'RE SAYING IS, WELL, THEY SHOULD BE ABLE TO HAVE THE COURT DECIDE A DISPUTED ISSUE THAT THE PARTIES ARE NEGOTIATING A CONTRACT ABOUT. THE FEDERAL COURTS DON'T DO THAT. AND -- ESPECIALLY ABSENT A STIPULATION.

NOW, IF THE PARTIES -- YOU KNOW, IF WE TAKE DISCOVERY FOR A YEAR AND SOME OF THESE CLAIMS DROP OUT, OR SOMETHING ELSE, HOPEFULLY, WE'D SETTLE THE CASE, BUT IT'S CONCEIVABLE THAT WE MIGHT COME BACK AND SAY, WE'VE NEGOTIATED ALL THE TERMS EXCEPT THE RATE, AND, THEREFORE, WE'LL STIPULATE TO THAT. BUT THAT'S NOT WHERE WE ARE, YOUR HONOR.

THERE'S NO WAY THAT WE'RE WILLING TO STIPULATE WITH HUAWEI SEEKING SOLELY INJUNCTIVE RELIEF ON MULTIPLE STANDARD ESSENTIAL PATENTS IN CHINA, SOMETHING THEY DIDN'T EVEN INFORM THE COURT OF.

THEY'RE TAKING THE POSITION RIGHT NOW, YOUR HONOR, THAT IN CHINA THEY SHOULD BE ABLE TO GET INJUNCTIONS, BUT HERE IN THE UNITED STATES, WE SHOULD BE BARRED FROM SEEKING ANY INJUNCTIVE RELIEF WORLDWIDE.

AND WE CAN'T SIT AROUND AND NOT DEFEND OURSELVES, YOUR HONOR, AND RIGHT NOW WE'RE FOCUSING ON DEFENDING OURSELVES. YOU KNOW, WE WERE NEGOTIATING WITH THEM. THERE WAS FIVE MONTHS OF RADIO SILENCE, AND ALL OF A SUDDEN, AN AVALANCHE OF LAWSUITS. YOU KNOW, THERE'S A HE SAID/SHE SAID ABOUT WHO IS NEGOTIATING -- YOU KNOW, WE HAVE TO GET INTO THE FACTS AND LEARN ALL OF THAT.

BUT ONE FACT IS UNDISPUTED, AND THAT'S THEIR RATE HAS NOT CHANGED OVER FIVE YEARS; WHEREAS, WE HAVE PROFFERED DIFFERENT ALTERNATIVES, YOUR HONOR, AND WE HAVE BEEN TRYING TO WORK WITH THEM, BUT THE NOTION THAT A JURY SHOULD BE ASKED TO SET THE TERM OF A WORLDWIDE LICENSE AGREEMENT WHICH INVOLVES MULTIPLE DIFFERENT TECHNOLOGIES -- FOR EXAMPLE, HUAWEI IS VERY INTO INFRASTRUCTURE, THOSE CELL TOWERS AND ALL OF THAT. SO THAT'S A WHOLE DIFFERENT TECHNOLOGY THAN THE PATENTS ON -- WELL, IT'S RELATED, BUT IT'S DIFFERENT THAN THE PATENTS ON SMARTPHONES OR TABLETS OR PROTOCOLS ALONG THOSE LINES, YOUR HONOR. SO IT'S NOT JUST A SIMPLE WAY -- A JURY COULDN'T JUST SIMPLY UNDERSTAND ALL OF THESE DIFFERENT TECHNOLOGIES.

ANOTHER POINT, YOUR HONOR, IS, WHEN THESE LICENSE AGREEMENTS GET NEGOTIATED, THERE'S A LOT OF PREDICTIONS THAT BOTH SIDES HAVE TO TAKE THE RISK ON, YOU KNOW, HOW IS TECHNOLOGY GOING TO EVOLVE.

USUALLY, THESE TAKE A WHILE TO NEGOTIATE. THEY'RE FOR FIVE-, TEN-YEAR TERMS. YOU NEVER KNOW IN THESE FAST-MOVING

TECHNOLOGICAL AREAS WHERE TECHNOLOGY IS GOING TO BE. AND SO THE TERMS, THE NON-RATE TERMS ARE VERY SIGNIFICANT, AND THEY WILL HAVE AN IMPACT ON THE RATE.

SO THAT NOTION THAT YOU COULD JUST SET A RATE, TO GIVE THAT TO A JURY AND HAVE A JURY DO THAT, NO REASONABLE COMPANY SHOULD -- WOULD -- I THINK SHOULD AGREE TO THAT, YOUR HONOR; BECAUSE IT WOULD JUST -- YOU'D BE THROWING A MAJOR, MAJOR COMPONENT OF YOUR BUSINESS TO JURORS THAT DON'T HAVE THE TECHNICAL ACUMEN OR THE BUSINESS ACUMEN TO UNDERSTAND WORLDWIDE MARKETS AND THE TECHNOLOGY AND TRENDS IN THE MARKETPLACE.

SO THE REQUEST UNDER THE DEC RELIEF CLAIM, YOUR HONOR, WE THINK MAKES ABSOLUTELY NO SENSE. IT'S NOT FEASIBLE. AND WE ACTUALLY DO THINK THAT THERE ARE SERIOUS ISSUES AS TO WHETHER IT WOULD BE APPROPRIATE FOR THE COURT TO DO THAT. AND IN ALL EVENTS, YOUR HONOR, IT'S ALL PREMATURE.

THE PLAINTIFF ASKED US TO EXTEND THE TIME TO RESPOND TO OUR COUNTER- -- ANSWERING COUNTERCLAIMS TO NOVEMBER 11TH. SO WE'RE NOT EVEN AT ISSUE YET.

I DON'T KNOW WHAT THEIR -- YOU KNOW, THEY MAY HAVE CLAIMS IN RESPONSE TO OUR CLAIMS, OR THEY MAY HAVE A BIG DEFENSE THAT CHANGES THE STRUCTURE OF DISCOVERY THAT WE'LL HAVE TO DEAL WITH. WE JUST DON'T KNOW.

I NOTICED, YOUR HONOR, THAT THE PARTIES HAVE AGREED IN THE SCHEDULE -- IT'S IN OUR CMC STATEMENT, STARTING ON PAGE 22 THROUGH 27, ALL THE DATES ARE AGREED BETWEEN THE PARTIES UP

THROUGH *MARKMAN*, YOUR HONOR.

SO, REALLY, IT DOESN'T MAKE ANY SENSE TO TALK ABOUT THINGS LIKE BIFURCATING NOW. EVEN IF THAT WAS SOMETHING THE COURT WAS INCLINED TO DO, IT'S SOMETHING THAT SHOULD AWAIT A MUCH LATER TIME IN THE CASE.

I MEAN, IN MY EXPERIENCE, PEOPLE DON'T EVEN MAKE BIFURCATION TRIAL MOTIONS, WHICH IS ESSENTIALLY WHAT THEY'RE DOING HERE. THEY'RE AGREEING TO DISCOVERY ON EVERYTHING. SO, IN MY EXPERIENCE, YOU DON'T EVEN ADDRESS HOW YOU'RE GOING TO TRY THE DIFFERENT ISSUES UNTIL YOU GET PAST SUMMARY JUDGMENT, YOUR HONOR.

SO -- SO FOR ALL OF THOSE REASONS, WE THINK BIFURCATION DOESN'T MAKE ANY SENSE HERE, AND WE THINK THE MOST EFFICIENT WAY FOR THE COURT TO PROCESS THIS IS DO ALL THE DISCOVERY TOGETHER, JUST HAVE THESE DATES JUST LIKE A REGULAR CASE, AND IF SOMETHING POPS UP, THE PARTIES AGREE ON, HEY, THIS WOULD BE EFFICIENT TO DO THIS FIRST BECAUSE IT'S A GATING ISSUE OR SOMETHING LIKE THAT, THEN WE CAN ADDRESS IT ONCE WE HAVE THE CASE NARROWED AND WE KNOW WHAT'S GOING ON. BUT RIGHT NOW WE SIMPLY AREN'T THERE.

AND SCHEDULING IT THAT WAY WILL INCREASE THE CHANCES OF SETTLEMENT. THE WORK WILL GET DONE FASTER BECAUSE IT WILL GET ALL DONE IN PARALLEL INSTEAD OF SERIALLY. AND YOU KNOW, IF THE PARTIES CAN'T WORK IT OUT, WE'LL DO A TRIAL, 12-DAY, TWO-WEEK TRIAL, MAYBE, ON ALL THE ISSUES THAT YOUR HONOR

DETERMINES ARE JUSTICIABLE BEFORE THE JURY. AND THAT'S GOING TO BE MUCH MORE EFFICIENT IN TERMS OF THE COURT'S RESOURCES THAN SOME SORT OF SERIAL ISSUE-BY-ISSUE PROCEDURE.

MR. PRITIKIN: YOUR HONOR, MAY I RESPOND TO THAT?

THE COURT: YES, PLEASE.

MR. PRITIKIN: FIRST, AS FAR AS THE CASE MANAGEMENT CONFERENCE SCHEDULE THAT WE PROVIDED, OF COURSE, WE FILLED IN THE DATES THERE BECAUSE THE ORDER REQUIRES IT, BUT WE SAID IN IT THAT WE THINK THAT IT OUGHT TO BE BIFURCATED, AND THAT THE LOGICAL WAY TO DO THIS WOULD BE TO STAY THE PATENT CLAIMS.

YOU KNOW, WE'RE FACING THE PROSPECT -- I MEAN, WE'RE WILLING TO DO THE WORK. WE GET PAID TO DO THIS, BUT WE'RE TRYING TO DO IT IN AN EFFICIENT WAY. WE'RE LOOKING AT THE PROSPECT OF 22 *MARKMAN* HEARINGS ON THE 22 PATENTS, THEIR 11 AND OURS.

WE THINK, AS I SAID, THAT'S GOING TO ULTIMATELY TAKE US DOWN A CUL-DE-SAC THAT ISN'T GOING TO RESOLVE THE CASE, AND THAT THE BETTER WAY TO DEAL WITH IT IS TO FIND A WAY TO GET THE CORE FRAND ISSUES RESOLVED SO THAT THE PARTIES THEN HAVE THE LICENSES THAT THEY'RE ENTITLED TO.

SPECIFICALLY, A COUPLE OF THE POINTS THAT MR. VERHOEVEN MENTIONED AS TO WHETHER OR NOT THE COURT SHOULD PROCEED TO DETERMINE WHAT THE FRAND RATE WOULD BE. IF YOU LOOK AT THEIR PRAYER FOR RELIEF, IN PARAGRAPH G OF THEIR COUNTERCLAIM, THEY SAID SAMSUNG PRAYS THAT, G, THAT THE COURT

GRANT INJUNCTIVE RELIEF REQUIRING THAT HUAWEI MAKE AVAILABLE TO SAMSUNG ALL OF ITS 3G AND 4G SEPS ON FRAND TERMS.

YOU CAN READ PARAGRAPH AFTER PARAGRAPH IN THE 500-PARAGRAPH COUNTERCLAIM THAT THEY FILED THAT REINFORCES THE VERY POINTS THAT I'M MAKING. THAT THE PARTIES ARE IN OBLIGATION TO DO IT. BOTH PARTIES ARE WILLING TO DO IT. BOTH PARTIES ARE ENTITLED TO LICENSES FROM THE OTHER SIDE.

THIS IS DIFFERENT. THIS IS NOT A SITUATION WHERE YOU HAVE TWO PARTIES WHO ARE NEGOTIATING A CONTRACT AND THERE'S AN OPEN TERM THAT THEY CAN'T AGREE ON WHERE THEY COME TO THE COURT AND THEY SAY, YOU KNOW, WE CAN'T DECIDE WHICH KIND OF CAR TO BUY.

THAT IS NOT WHAT THIS IS BECAUSE OF THE OVERARCHING FRAND REQUIREMENTS THAT ARE IMPOSED ON BOTH SIDES REQUIRING THAT THEY PROVIDE THE LICENSE, AND THAT'S WHY THE DJ ACTION HERE IS DIFFERENT FROM SIMPLY AN OPEN, UNRESOLVED, CONTRACT TERM THAT EXISTS OUT THERE. THERE'S A LEGAL REQUIREMENT HERE THAT IS IMPOSED BY THE CONTRACTUAL COMMITMENTS THAT BOTH SIDES MADE TO GRANT AND TO RECEIVE LICENSES ON FRAND TERMS.

AS TO THE QUESTION OF ALL OF THE PATENTS AND WHETHER THEY'RE VALID, WHETHER THEY'RE INFRINGED, THEY KEEP COMING BACK TO THAT. THE TRUTH OF THE MATTER IS THEY'RE OBLIGATED TO GIVE US A LICENSE TO THE SAMSUNG PATENTS ON FRAND TERMS, AND WE DON'T HAVE TO LITIGATE THE VALIDITY OF ALL OF THEIR PATENTS. WE DON'T HAVE TO GO THROUGH ALL OF THAT.

WE'RE ENTITLED TO THAT LICENSE ON FRAND TERMS, WITHOUT HAVING TO GO THROUGH A PATENT-BY-PATENT LITIGATION OF THOUSANDS OF PATENTS.

WHEN THE COURT VALUES THE PATENTS -- AND COURTS HAVE DONE THIS. YOU WOULD NOT BE THE FIRST WHO'S BEING ASKED TO DO IT. THAT'S ONE OF THE FACTORS THEY CAN TAKE INTO ACCOUNT, IS HOW STRONG THE PATENT PORTFOLIOS ARE. THERE ARE WAYS OF PRESENTING THAT EVIDENCE. BUT THERE'S A DISPUTE OUT THERE BETWEEN THE PARTIES. THERE'S A LEGAL REQUIREMENT THAT GOVERNS IT, AND IT'S SOMETHING THAT CRIES OUT TO BE RESOLVED.

THAT'S WHY WE THINK THAT, AGAIN, THAT THE LOGICAL WAY TO GO ABOUT THIS WOULD BE FOR THE COURT TO PUT THOSE ISSUES FRONT AND CENTER.

NOW, WE THINK THAT IT WOULD BE BETTER TO JUST STAY DISCOVERY ON THESE -- THE PATENT CLAIMS BOTH WAYS AND GET TO THE CORE FRAND ISSUES. THE ALTERNATIVE, IF THE COURT WANTS TO PROCEED WITH DISCOVERY ON THE PATENT ISSUES -- WE DON'T HAVE A STRONG OBJECTION TO THAT. WE DON'T THINK IT'S PARTICULARLY EFFICIENT. WE THINK THAT THE *MARKMAN* HEARINGS THAT ARE ENTAILED IN IT PUT AN UNNECESSARY AND UNDUE BURDEN ON THE COURT, GIVEN THAT THE FRAND ISSUES ARE GOING TO RESOLVE THE CASE ULTIMATELY.

BUT THE OTHER WAY OF APPROACHING IT WOULD BE TO LET THE DISCOVERY PROCEED. LET'S PUT OFF THESE *MARKMAN* HEARINGS, AND LET'S STAGE THE TRIALS IN A WAY WHERE WE CAN GET A

RESOLUTION OF THE FRAND RATES BOTH WAYS AT SOME LOGICAL TIME. NOW, WHETHER THAT'S A YEAR FROM NOW, A YEAR AND A HALF FROM NOW, I DON'T KNOW. IT DEPENDS UPON WHAT THE COURT'S SCHEDULE AND DEPENDS UPON WHAT THE PARTIES CAN DO.

THE COURT: MR. VERHOEVEN, DO YOU WANT LAST COMMENT ON THIS?

MR. VERHOEVEN: OH, SURE. FIRST OF ALL, YOUR HONOR 22 *MARKMAN* HEARINGS ARE NOT NECESSARY.

THE COURT: DID MR. JOHNSON JUST PASS YOU THAT NOTE? I AGREE --

MR. VERHOEVEN: OH, NO. HE HAS A MORE SUBTLE POINT.

UNIDENTIFIED SPEAKER: (UNDISCERNIBLE.)

MR. VERHOEVEN: I'M SURE WE COULD.

THE COURT: I'M SHOULD PRETTY SURE YOU CAN GET IT DOWN TO ONE.

MR. VERHOEVEN: YES, EXACTLY.

THE COURT: WHICH IS WHAT WE'LL HAVE IN THIS CASE.

MR. VERHOEVEN: EXACTLY, YOUR HONOR.

THE COURT: GO AHEAD.

MR. VERHOEVEN: THAT WAS MY FIRST POINT.

SECOND, WE STRONGLY, VEHEMENTLY DISAGREE THAT THE ETSI CONTRACT CLAIMS SIMPLY REQUIRE US TO GIVE MONEY ON FRAND TERMS. THERE'S PREDICATE FINDINGS THAT NEED TO BE MADE UNDER THAT. AS I SAID BEFORE VALIDITY, INFRINGEMENT, ELIGIBILITY FOR PATENTABILITY UNDER 101 AND ESSENTIALITY.

AND, YOU KNOW, THIS IS THE NOTE THAT MR. JOHNSON PASSED ME, IS THE PLAINTIFF IS CHALLENGING VALIDITY INFRINGEMENT, PRESUMABLY, AND ENFORCEABILITY ON OUR PATENTS. WE HAVEN'T GOT THEIR REPLY YET, BUT I DOUBT VERY MUCH THEY'RE STIPULATING TO ALL THOSE THINGS, AND THEY ARE GOING TO ASSERT -- THEY HAVE A RIGHT TO THOSE PRELIMINARY DETERMINATIONS AS WELL BEFORE WE GET TO DAMAGES OR REMEDY.

AND THAT IS THE WAY WE BELIEVE THAT MAKES MOST LOGICAL SENSE TO PROCEED, YOUR HONOR, AND THAT WHAT PLAINTIFF IS DOING IS ASKING THE COURT TO PUT REMEDY BEFORE LIABILITY, PUT THE CART BEFORE THE HORSE, AND THAT WILL NOT STREAMLINE THINGS. IT WILL CAUSE MUCH MORE PROBLEMS THAN JUST DOING EVERYTHING TOGETHER.

THE COURT: ALL RIGHT. SO I AM GOING TO THINK A LITTLE HARDER ABOUT THIS. MY INCLINATION REMAINS THE SAME, AND -- SO I HAVE A -- AND THIS MAY BE FOR THE AUDIENCE MORE THAN THE LAWYERS, BUT THE -- I HAVE THIS GENERAL NOTION THAT FILING 22 LAWSUITS AGAINST EACH OTHER TO RESOLVE THIS ISSUE IS NOT THE WISEST WAY OF DEALING WITH THE PROBLEM THAT YOU HAVE.

AND I GIVE -- I GIVE A SPEECH FROM TIME TO TIME THAT NOBODY LISTENS TO, AND SO I DON'T EXPECT ANYBODY TO LISTEN TO IT NOW, BECAUSE YOU ARE -- YOU REPRESENT THE CAPTAINS OF INDUSTRY THAT DO SO MANY VALUABLE THINGS IN THIS COUNTRY. IT'S A TERRIBLE IDEA TO HAVE DECISIONS MADE BY, YOU KNOW, GENERALIST JUDGES AND JURIES, WHERE THE LAWYERS, NOT THE PEOPLE WITH ANY

EXPERIENCE IN THE AREA, OFF THE JURY IN ORDER TO MAKE A DETERMINATION.

I MEAN, THIS IS JUST -- THIS IS SILLY, AND THIS PARTICULAR WAY THAT THIS CASE IS DEVELOPING DOESN'T SEEM VERY SENSIBLE TO ME.

HOWEVER, I RECOGNIZE THAT THERE MAY BE -- THERE MAY BE VALUE IF THERE WAS ONE CASE THAT COULD DECIDE EVERYTHING AND THEN GET IT UP TO SOME APPELLATE COURT, THAT WOULD THEN SEND IT BACK DOWN BECAUSE THE TRIAL JUDGE WOULD MAKE THE MISTAKES, AND THEN IT WOULD GO UP, AND THEN IT WOULD GET REVERSED BY THE SUPREME COURT, AND COME BACK DOWN, SO YOU WOULD BE DOING THAT FOR TEN YEARS. BUT IT WOULD BE BETTER THAN DOING THAT IN TEN PLACES IN THE UNITED STATES OR 12 IN CHINA, WHATEVER IT IS. THIS DOES NOT SEEM WISE.

THAT SAID, I GET PAID TO COME HERE EVERY DAY AND DEAL WITH THE CASES THAT ARE IN FRONT OF ME. I THINK WHAT I'M GOING TO DO NOW IS I'M GOING TO SET A SCHEDULE AS IF I HAVE DECIDED THAT WE'RE GOING TO DO THE CASE THE WAY THAT EVERY OTHER CASE GETS DONE.

I WILL LOOK MORE CLOSELY AT THE PLEADINGS -- WHICH I HAVE NOT GONE IN ANY DETAIL THROUGH THE PLEADINGS, AND I'LL REREAD THE CASES AND -- BUT I'M GOING TO SET A SCHEDULE, ASSUMING THAT WE'RE NOT GOING TO BIFURCATE.

MR. PRITIKIN: YOUR HONOR, MAY WE SUBMIT A SHORT BRIEF WITHIN A WEEK ON THIS SUBJECT OF -- BECAUSE SOME OF THESE

THINGS IN THE -- THERE ARE ARGUMENTS THAT ARE MADE IN THE CASE MANAGEMENT STATEMENT THAT -- BUT IT'S NOT IN AS ORGANIZED A WAY --

THE COURT: SO IF YOU WOULD LIKE TO SUBMIT A FIVE-PAGE BRIEF, AND YOU CAN RESPOND IN FIVE PAGES A WEEK LATER, THAT'S FINE.

MR. VERHOEVEN: ALL RIGHT. THANK YOU.

THE COURT: SO YOU SUBMIT IT A WEEK FROM TODAY, AND THAT WILL REMIND ME THAT I ACTUALLY HAVE TO MAKE A FINAL DECISION ON THIS.

BUT LET'S ASSUME FOR THE MOMENT -- LET'S SET A SCHEDULE AS IF CONTINGENT ON MY CONTINUING TO THINK THAT BIFURCATION IS NOT GOING TO HAPPEN.

IF THAT'S THE CASE -- SO GOING THROUGH CLAIM CONSTRUCTION, I WOULD HAVE -- THE ONLY DATE THAT I WOULD CHANGE WOULD BE THE TECHNOLOGY TUTORIAL ON JULY 14TH INSTEAD OF 17TH AND THE *MARKMAN* HEARING ON THE 21ST.

THEN I MADE SOME ASSUMPTIONS ABOUT HOW QUICKLY I WOULD RULE, WHICH IS PROBABLY A MISTAKE. BUT I'M GOING TO SET END DATES THAT I -- THAT I AM GOING TO TRY TO HIT THE MARK ON, AND THAT WOULD BE A TRIAL ON SEPTEMBER 17TH OF 2018.

IS THERE ANY CONFLICT IN THAT DATE?

MR. PRITIKIN: SO FAR OUT, I DON'T BELIEVE SO, YOUR HONOR.

THE COURT: IT'S FAR OUT, BUT I -- PEOPLE COME IN

HERE ALL THE TIME AND TELL ME THAT THEY'RE BOOKED UNTIL, YOU KNOW -- THE EARTH IS SHAKING AGAIN.

MR. VERHOEVEN: YOUR HONOR, I THINK WE'RE OKAY WITH THAT DATE. I'LL HAVE TO CHECK WITH OTHER PEOPLE, BUT IF THERE'S A PROBLEM -- IS IT OKAY IF WE JUST LET YOU KNOW RIGHT AWAY?

THE COURT: LET ME KNOW THIS A WEEK. SO SEPTEMBER 17TH.

PRETRIAL WOULD BE AUGUST 20TH.

MR. PRITIKIN: AND, YOUR HONOR, WE'LL LET YOU KNOW PROMPTLY IF THERE'S A PROBLEM WITH THESE DATES.

THE COURT: AND THEN WE'LL HAVE TO DISPOSITIVE HEARINGS AND *DAUBERTS* ON MAY 2ND. THOSE WERE HEARING DATES, AND WE'LL WORK THE SCHEDULE BACK. YOU CAN WORK THE SCHEDULE BACK, AND THAT WILL BE SUBJECT TO WHEN I GET MY CLAIM CONSTRUCTION ORDER OUT, BUT I'M -- MY HOPE IS THAT I WILL GET IT OUT WITHIN ROUGHLY A MONTH OF THE TIME THAT IT'S SUBMITTED TO ME.

MR. VERHOEVEN: YOUR HONOR, I DO KNOW THAT I HAVE A TRIAL IN APRIL OF 2018. IF WE COULD PUSH THAT BACK BY JUST A COUPLE OF WEEKS, IT WOULD HELP ME QUITE A BIT, THE HEARING ON SUMMARY JUDGMENT AND *DAUBERT*.

THE COURT: WELL, WHY DON'T -- LET'S HOLD THAT THOUGHT, AND AFTER THE CLAIM CONSTRUCTION ORDER COMES OUT, WE'LL SET ALL OF THE DATES. I'VE GIVEN MYSELF A LITTLE LEEWAY

IN THERE. BUT I'M EXPECTING, IF THIS CASE IS GOING TO GO, I'M GOING TO SEE A LOT OF PAPER COMING IN ON THE *DAUBERTS* AND ON THE SUMMARY JUDGMENT, WHICH MAY TAKE ME LONGER THAN USUAL. SO I WANTED -- SO I GAVE MYSELF FOUR MONTHS INSTEAD OF THREE. SO THERE'S SOME PLAY IN THERE, BUT NOT A TON.

ALL RIGHT. WITH THAT, NOW, WHAT ABOUT ADR JUST IN GENERAL? WHERE ARE YOU?

MR. VERHOEVEN: THE PARTIES HAVE AGREED TO -- SORRY -- DO YOU MIND IF I -- THE PARTIES HAVE AGREED TO PRIVATE MEDIATOR, AND THE PARTIES BELIEVE THE BEST TIME TO DO THAT WOULD BE AFTER THE *MARKMAN* ORDER, IF THAT'S OKAY WITH YOUR HONOR.

THE COURT: THAT'S FINE WITH ME. IT'S INCONSISTENT WITH TRYING TO GET SOMETHING DONE. IT SEEMS -- IT SEEMS LIKE AN ODD WAY FOR PEOPLE WHO ARE AS EXCITED IN RESOLVING THIS TO DO IT, BUT I WON'T -- EVERY OTHER -- I TOLD YOU I WAS GOING TO TREAT IT LIKE A REGULAR OLD PATENT CASE, AND I KNOW THAT IF THIS WAS ABOUT 11 PATENTS, YOU'D WANT TO KNOW WHAT I WAS GOING TO SAY IN CLAIM CONSTRUCTION. SO I WON'T MAKE YOU DO SOMETHING DIFFERENT THAN THAT.

I WOULD ENCOURAGE YOU TO THINK MORE BROADLY ABOUT THIS CASE AND WHAT IS IN THE BEST INTEREST OF YOUR CLIENTS. AND IF -- I HAD BEEN THINKING THAT YOU MIGHT BE WELL SERVED BY HAVING A MAGISTRATE JUDGE IN THIS COURT TRYING TO COORDINATE YOUR THINKING ON THIS, BUT I'M NOT GOING TO FORCE YOU TO DO

THAT IF WHAT YOU REALLY WANT TO DO IS MAKE ME ISSUE A CLAIM CONSTRUCTION ORDER, WHICH I -- NO SIDE WILL EVER LIKE ANY OF MY CLAIM CONSTRUCTION ORDERS. I'M REALLY CONFIDENT OF THAT.

MR. PRITIKIN: YOUR HONOR, WE'RE CERTAINLY OPEN IT TO AT ANY STAGE. I MEAN, WE THINK THE SENSIBLE RESOLUTION -- I'M NOT GOING TO REPEAT MYSELF -- IS FOR THE PARTIES TO ENTER INTO A MUTUAL CROSS-LICENSE ON ALL OF THESE PATENTS. WE'RE OPEN TO ANY TIME MEETING WITH A MEDIATOR.

PERSONALLY, I DON'T THINK -- BECAUSE I'M NOT SURE THE CASE IS NECESSARILY ABOUT THOSE 22 PATENTS THAT ARE ASSERTED HERE -- THAT THAT'S GOING TO BE TERRIBLY MEANINGFUL IN THE CONTEXT OF AN ULTIMATE RESOLUTION OF THE CASE AND THAT WE WOULD BE OPEN TO HAVING A MEDIATION EARLIER THAN THAT.

MR. VERHOEVEN: WELL, YOUR HONOR --

MR. PRITIKIN: IT HAS TO BE DONE BY AGREEMENT OF THE PARTIES. LIKE SO MANY OF THESE THINGS, IF THE PARTIES DON'T WANT TO TALK AND WANT TO RESOLVE IT, THEN MEDIATIONS GENERALLY ARE NOT VERY PRODUCTIVE.

THE COURT: I'VE NOTICED THAT.

MR. PRITIKIN: BUT WHAT I WOULD PROPOSE, YOUR HONOR, IS THIS: MAYBE WE SHOULD TALK FURTHER WITH MR. VERHOEVEN AFTER THE HEARING AND SEE WHETHER THE PARTIES THINK IT MAKES SENSE TO TRY TO SCHEDULE SOMETHING AT AN EARLIER DATE.

THE COURT: WHY DON'T YOU DO THAT?

MR. VERHOEVEN: THAT'S FINE. I MEAN, JUST FOR THE

RECORD, AS WE STATED IN OUR CMC STATEMENT, WE PROPOSED STAYING EVERYTHING FOR 90 DAYS TO TRY TO DO SETTLEMENT, WHICH IS REJECTED. BUT I'M PERFECTLY HAPPY, IF YOUR HONOR THINKS EARLIER MEDIATION WOULD MAKE SENSE, WE'LL DO IT, YOUR HONOR, SO...

THE COURT: WELL, SO I -- I WANT YOU TO THINK ABOUT WHETHER YOU CAN IN GOOD FAITH SIT DOWN AND TRY TO WRESTLE SOME OF THE ISSUES. AND IF YOU CAN DO THAT, THEN I WANT YOU TO DO IT. AND I'M -- I THINK STAYING THINGS FOR 90 DAYS WOULD BE FINE. IT WOULD MAKE SENSE TO ME, BUT I'M NOT GOING TO REQUIRE IT IN THIS CASE.

IF YOU WANT ONE OF THE MAGISTRATE JUDGES IN THIS COURT TO BE SITTING WITH YOU AND YOUR CLIENTS, I THINK I CAN ASSURE YOU THAT THAT -- THAT COULD HAPPEN. BUT IF YOU DON'T, IF YOU HAVE A PRIVATE MEDIATOR THAT YOU'RE COMFORTABLE WITH AND WHO'S KNOWLEDGEABLE, BY ALL MEANS, USE THAT PERSON.

BUT -- SO IF YOU DECIDE THAT YOU WOULD LIKE TO HAVE A MAGISTRATE JUDGE BE APPOINTED NOW FOR SETTLEMENT, I WILL DO THAT. AND JUST LET MS. DAVIS KNOW. IF YOU DECIDE THAT YOU WANT THE PRIVATE MEDIATOR TO START WORKING ON THINGS, LET MS. DAVIS KNOW. BUT I'M NOT GOING TO ORDER ANYTHING ONE WAY OR ANOTHER. OR DON'T LET HER KNOW, AND I'LL JUST SEE YOU THE NEXT TIME I SEE YOU. AND THEN I'LL ASK YOU ABOUT THIS, AND YOU CAN TELL ME WHY YOU'RE BACK.

OKAY. SO THAT'S -- I JUST -- I REALLY THINK THAT

THIS IS -- IT WOULD BE WISE TO MAKE AN EFFORT TO RESOLVE 22 CASES AROUND THE WORLD AND MOVE ON WITH SOMETHING ELSE THAT'S MORE PRODUCTIVE.

SO, FINALLY, WITH RESPECT TO DISCOVERY, IN THIS CASE, YOU HEARD MY OFFHAND COMMENT. I'M NOT, AT THE MOMENT, GOING TO APPOINT A MAGISTRATE JUDGE FOR DISCOVERY, BECAUSE I WANT TO SEE WHO'S BEING UNREASONABLE THE FIRST TIME YOU HAVE A DISPUTE. BUT THEN I'LL PROBABLY SEND IT TO A MAGISTRATE JUDGE IF -- OF COURSE, MAYBE YOU WON'T HAVE DISPUTES, AND THAT WOULD BE GREAT, BUT -- BUT THAT'S WHAT I'M -- I'M INCLINED TO THINK THAT WOULD BE -- THAT THAT'S WHAT I'M GOING TO DO.

SO IF YOU DO HAVE -- IF YOU RUN A CROPPER EARLY, SIT DOWN, LEAD COUNSEL, WORK THROUGH THE ISSUES, AND THEN DISTILL THEM IN A WAY THAT I WILL UNDERSTAND AND IN A FIVE-PAGE LETTER, AND I WILL DO MY BEST TO RESOLVE IT.

MR. VERHOVEN: WE THINK THAT'S THE BEST WAY TO PROCEED AS WELL, YOUR HONOR.

AND I SHOULD SAY THAT MR. PRITIKIN AND MYSELF HAVE BEEN ADVERSE TO EACH OTHER MULTIPLE TIMES, AND I ANTICIPATE THAT HOPEFULLY THERE WILL BE NOT SO MANY DISPUTES.

THE COURT: THAT WOULD BE A GREAT THING. ZERO IS A GOOD THING TO SHOOT FOR.

MR. PRITIKIN: WE'LL WORK ON IT, YOUR HONOR.

THE COURT: ALL RIGHT. IS THERE ANYTHING ELSE THAT WE OUGHT TO TALK ABOUT WHILE PEOPLE ARE HERE TODAY?

MR. VERHOEVEN: NO, YOUR HONOR.

MR. PRITIKIN: NO, I DON'T BELIEVE SO.

THE COURT: ALL RIGHT. THANK YOU ALL. GOOD LUCK.

MR. VERHOEVEN: THANK YOU, YOUR HONOR.

UNIDENTIFIED SPEAKER: THANK YOU, YOUR HONOR.

(PROCEEDINGS ADJOURNED AT 3:00 P.M.)

CERTIFICATE OF TRANSCRIBER

I CERTIFY THAT THE FOREGOING IS A TRUE AND CORRECT TRANSCRIPT, TO THE BEST OF MY ABILITY, OF THE ABOVE PAGES OF THE OFFICIAL ELECTRONIC SOUND RECORDING PROVIDED TO ME BY THE U.S. DISTRICT COURT, NORTHERN DISTRICT OF CALIFORNIA, OF THE PROCEEDINGS TAKEN ON THE DATE AND TIME PREVIOUSLY STATED IN THE ABOVE MATTER.

I FURTHER CERTIFY THAT I AM NEITHER COUNSEL FOR, RELATED TO, NOR EMPLOYED BY ANY OF THE PARTIES TO THE ACTION IN WHICH THIS HEARING WAS TAKEN; AND, FURTHER, THAT I AM NOT FINANCIALLY NOR OTHERWISE INTERESTED IN THE OUTCOME OF THE ACTION.

JOAN MARIE COLUMBINI

SEPTEMBER 16, 2016